

## **REMARKS:**

Claims 1-27 are currently pending in the subject Application. Claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27 stand rejected under 35 U.S.C. § 102(a) over U.S. Patent No. 6,219,649 to Joel Jameson ("*Jameson*"). Claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) over *Jameson* in view of the Examiner's purported Official Notice.

Although the Applicants believe claims 1-27 are directed to patentable subject matter and are in condition for allowance without amendment. The Applicants have canceled claims 8, 17, and 26. The Applicants have also amended claims 1-3, 6, 7, 9-12, 14-16, 18-21, 23-25, and 27 to expedite prosecution of this Application and to more particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. By making these amendments, the Applicants make no admission concerning the merits of the Examiner's rejection, and respectfully deny any statement or averment of the Examiner not specifically addressed. Particularly, the Applicants reserve the right to file additional claims in this Application or through a continuation patent application of substantially the same scope of originally filed claims 1-27. No new matter has been added.

## **REJECTION UNDER 35 U.S.C. § 102(a):**

Claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27 stand rejected under 35 U.S.C. § 102(a) over *Jameson*.

Although the Applicants believe claims 1-27 are directed to patentable subject matter without amendment, the Applicants have canceled claims 8, 17, and 26. The Applicants have also amended claims 1-3, 6, 7, 9-12, 14-16, 18-21, 23-25, and 27 to expedite prosecution of this Application and to more particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. By making these amendments, the Applicants do not indicate agreement with or acquiescence to the

Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 102(a), as set forth in the Office Action.

The Applicants have reviewed *Jameson* in detail, particularly looking for a system, method, or software for solving a supply chain planning problem. However, *Jameson* fails to disclose each and every limitation recited by claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27. Thus, the Applicants respectfully submit that claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27 patentably distinguish over *Jameson*.

### **Jameson Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims**

For example, with respect to amended independent claim 10, this claim recites:

A system for ***solving a supply chain planning problem***, comprising:

***a plurality of independent sub-problems decomposed from the supply chain planning problem;***

***a database, said database including a plurality of distributed partitions, each partition of said plurality of distributed partitions associated with a respective independent sub-problem of said supply chain planning problem; and***

***at least one processor operating in a distributed database processing environment, the at least one processor associated with a respective partition of said plurality of distributed partitions, and collectively operable to:***

***form a plurality of distributed sub-problem partitions, each of said distributed sub-problem partitions including a plurality of related items and associated with a respective independent sub-problem of said supply chain planning problem;***

***load data into a plurality of distributed database partitions, said data associated with said plurality of related items, and each of said distributed database partitions associated with a respective one of each of said distributed sub-problem partitions; and***

***solve said plurality of said independent sub-problems by separate processes operating in parallel in the distributed database processing environment.*** (Emphasis Added).

Independent claims 1, 9, 18, 19, and 27 recite similar limitations. *Jameson* fails to disclose each and every limitation of independent claims 1, 9, 10, 18, 19, and 27.

The Applicants respectfully submit that *Jameson* has nothing to do with amended independent claim 10 limitations regarding ***a system for solving a supply chain planning problem*** and in particular *Jameson* has nothing to do with independent claim 10 limitations regarding ***“at least one processor operating in a distributed database processing environment, the at least one processor associated with a respective partition of said plurality of distributed partitions, and collectively operable to form a plurality of distributed sub-problem partitions, each of said distributed sub-problem partitions including a plurality of related items and associated with a respective independent sub-problem of said supply chain planning problem”***. Rather *Jameson* discloses a method of allocating resources in an uncertain environment. (Abstract and Column 1, Lines 10-15). Thus, *Jameson* cannot provide ***a system for solving a supply chain planning problem***, since *Jameson* fails to disclose ***“at least one processor operating in a distributed database processing environment, the at least one processor associated with a respective partition of said plurality of distributed partitions, and collectively operable to form a plurality of distributed sub-problem partitions, each of said distributed sub-problem partitions including a plurality of related items and associated with a respective independent sub-problem of said supply chain planning problem”***, as recited in amended independent claim 10.

The Applicants respectfully submit that the allegation in the present Office Action that *Jameson* discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how *Jameson* is considered to anticipate all of the limitations in claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27. ***A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference.*** MPEP § 2131. (Emphasis Added). The Applicants respectfully point out that "it is incumbent upon the [E]xaminer to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicants respectfully submit that the Office Action has failed to establish a *prima facie* case of anticipation in claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27 under 35 U.S.C. § 102 with respect to

*Jameson* because *Jameson* fails to identically disclose each and every element of the Applicants claimed invention, arranged as they are in Applicants claims.

### **The Applicants Claims are Patentable over *Jameson***

With respect to amended independent claims 1, 9, 18, 19, and 27 each of these claims includes limitations similar to those discussed above in connection with amended independent claim 10. Thus, amended independent claims 1, 9, 10, 18, 19, and 27 are considered patentably distinguishable over *Jameson* for at least the reasons discussed above in connection with amended independent claim 10.

Furthermore, with respect to dependent claims 2, 4, 7, 11, 13, 16, 20, 22, and 25: claims 2, 4, and 7 depend from amended independent claim 1; dependent claims 11, 13, and 16 depend from amended independent claim 10; and dependent claims 20, 22, and 25 depend from amended independent claim 19 are also considered patentably distinguishable over *Jameson*. Thus, dependent claims 2, 4, 7, 11, 13, 16, 20, 22, and 25 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, the Applicants respectfully submit that amended independent claims 1, 9, 10, 18, 19, and 27 and dependent claims 2, 4, 7, 11, 13, 16, 20, 22, and 25 are not anticipated by *Jameson*. The Applicants further submit that amended independent claims 1, 9, 10, 18, 19, and 27 and dependent claims 2, 4, 7, 11, 13, 16, 20, 22, and 25 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of claims 1, 2, 4, 7-11, 13, 16-20, 22, and 25-27 under 35 U.S.C. § 102(a) be reconsidered and that claims 1, 2, 4, 7, 9-11, 13, 16, 17-20, 22, 25, and 27 be allowed.

### **THE LEGAL STANDARD FOR ANTICIPATION REJECTIONS UNDER 35 U.S.C. § 102:**

The following sets forth the legal standards for "anticipation."

The events that can lead to anticipation can be divided into the following seven categories, all defined by statute:

1. Prior Knowledge: The invention was publicly known in the United States before the patentee invented it.

2. Prior Use: The invention was publicly used in the United States either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.

3. Prior Publication: The invention was described in a printed publication anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.

4. Prior Patent: The invention was patented in another patent anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his application.

5. On Sale: The invention was on sale in the United States more than one year before the patentee filed his application.

6. Prior Invention: The invention was invented by another person in the United States before the patentee invented it, and that other person did not abandon, suppress or conceal the invention.

7. Prior U.S. Patent: The invention was described in a patent granted on a patent application filed in the United States before the patentee made the invention.

Each of those seven events has its own particular requirements, but they all have the following requirements in common:

1. Anticipation must be shown by clear and convincing evidence.
2. If one prior art reference completely embodies the same process or product as any claim, the product or process of that claim is anticipated by the prior art, and that claim is invalid. To decide whether anticipation exists, one must consider each of the elements recited in the claim and determine whether all of them are found in the particular item alleged to be anticipating prior art.

3. There is no anticipation unless every one of those elements is found in a *single* prior publication, prior public use, prior invention, prior patent, prior knowledge or prior sale. One may not combine two or more items of prior art to make out an anticipation. One should, however, take into consideration, not only what is expressly disclosed or embodied in the particular item of prior art, but also what inherently occurred in its practice.

4. There cannot be an accidental or unrecognized anticipation. A prior duplication of the claimed invention that was accidental, or unrecognized, unappreciated, and incidental to some other purpose is not an invalidating anticipation.

Those four requirements must be kept in mind and applied to each kind of anticipation in issue. The following additional requirements apply to some categories of anticipation.

1. Prior Knowledge: An invention is anticipated if it was known by others in the United States before it was invented by the patentee. "Known," in this context, means known to the public. Private knowledge, secret knowledge or knowledge confined to a small, limited group is not necessarily an invalidating anticipation. Things that were known to the public only outside the United States are not invalidating anticipation.

2. Prior Use: An invention is anticipated if it was used by others before it was invented by the patentee, or more than one year before the patentee filed his patent application. "Use," in this context, means a public use.

3. Prior Publication: A patent is invalid if the invention defined by the Claims was described in a printed publication before it was invented by the patentee or more than one year prior to the filing date of his application. For a publication to constitute an anticipation of an invention, it must be capable, when taken in conjunction with the knowledge of people of ordinary skill in the art, of placing the invention in the possession of the reader. The disclosure must be enabling and meaningful. In determining whether the disclosure is complete, enabling, and meaningful, one should take into account what would have been within the knowledge of a person of ordinary skill in the art at the time,

and one may consider other publications that shed light on the knowledge such a person would have had.

4. Prior Patent: If the invention defined by the claims was patented in the United States or a foreign country, either before it was invented by the inventor or more than one year before the inventor filed his patent application, then the invention was anticipated. The effective date for this type of anticipation is the date on which two things co-existed: (i) the owner of the referenced patent had the right to enforce that patent; and (ii) the reference patent was available to the public. What was "patented" in the reference patent is determined by what is defined by its claims, interpreted in the light of the general description.

5. On Sale: A patent is invalid if the invention claimed in it was on sale in the United States more than one year prior to the application filing date.

6. Prior Invention: If the invention defined by the claims was invented by another person, in the United States, before it was invented by the inventor, and that other person did not abandon, suppress, or conceal the invention, the invention lacks novelty. A prior invention, even if put in physical form and shown to produce the desired result, is not an invalidating anticipation unless some steps were taken to make it public. However, it is not necessary that the inventor had knowledge of that prior invention.

7. Prior U.S. Application: A patent is invalid for lack of novelty if the invention defined by the claims was described in a United States patent issued on a patent application filed by another person before the invention was made by the inventor. The effective date of a prior application for purposes of this issue is the date on which it was filed in the United States. Foreign-filed patent applications do not apply. If the issued United States patent claims the benefit of more than one United States application, its effective date as an anticipation is the filing date of the first United States application that discloses the invention claimed in that referenced patent.

Experimental Use Exception: The law recognizes that it is beneficial to permit the inventor the time and opportunity to develop his invention. As such there is an

"experimental use" exception to the "public use" and "on sale" rules. Even though the invention was publicly used or on sale, more than one year prior to the application filing date, that does not invalidate the patent, provided the principal purpose was experimentation rather than commercial benefit. If the primary purpose was experimental, it does not matter that the public used the invention or that the inventor incidentally derived profit from it.

When a public use or sale is shown, the burden is on the inventor to come forward with evidence to support the experimental use exception. Only experimentation by or under the control of the inventor qualifies for this exception. Experimentation by a third party, for its own purposes, does not qualify for this exception. Once the invention leaves the inventor's control, its use is a public one, even if further experimentation takes place.

The experimentation must relate to the claimed features of the invention. And it must be for the purpose of technological improvement, not commercial exploitation. If any commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation. A test done primarily for marketing, and only incidentally for technological improvement, is a public use.

**REJECTION UNDER 35 U.S.C. § 103(a):**

Claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) over *Jameson* in view of the Examiner's purported Official Notice.

Although the Applicants believe claims 1-27 are directed to patentable subject matter without amendment, the Applicants have canceled claims 8, 17, and 26. The Applicants have also amended claims 1-3, 6, 7, 9-12, 14-16, 18-21, 23-25, and 27 to expedite prosecution of this Application and to more particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. By making these amendments, the Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 103(a), as set forth in the Office Action.



The Applicants respectfully submit that *Jameson* or the Examiner's purported Official Notice, either individually or in combination, fail to disclose, teach, or suggest each and every element of claims 3, 5, 6, 12, 14, 15, 21, 23, and 24. Thus, the Applicants respectfully traverse the Examiner's obvious rejection of claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 under 35 U.S.C. § 103(a) over the proposed combination of *Jameson* or the Examiner's purported Official Notice, either individually or in combination.

**The Proposed *Jameson-Official-Notice* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Dependent Claims 3, 5, 6, 12, 14, 15, 21, 23, and 24**

For example, with respect to dependent claims 12, 14, and 15, these claims recite:

12. The system of Claim 10, wherein ***the number of distributed sub-problems and database partitions is equal to three***. (Emphasis Added).

14. The system of Claim 11, wherein said ***at least one processor is further operable to: assign a CLUSTER\_ID to each item of said plurality of related items***. (Emphasis Added).

15. The system of Claim 10, wherein said ***at least one processor is further operable to: size said distributed sub-problem partitions as close to equal as possible***. (Emphasis Added).

Dependent claims 3, 5, 6, 21, 23, and 24 recite similar limitations. *Jameson* or the Examiner's purported Official Notice, either individually or in combination, fail to disclose, teach, or suggest each and every limitation of dependent claims 3, 5, 6, 12, 14, 15, 21, 23, and 24.

The Applicants respectfully submit that *Jameson* has nothing to do with dependent claim 12 limitations regarding ***the number of distributed sub-problems and database partitions is equal to three***, or the at least one processor is operable to ***assign a CLUSTER\_ID to each item of said plurality of related items*** and ***size said distributed sub-problem partitions as close to equal as possible***. In addition, the Applicants respectfully submit that the Applicants are confused as to what the Examiner teaches by

the purported Official Notice or even the extent in which the Examiner is taking Official Notice. In fact, the only reference to an Official Notice that the Examiner asserts is “to introduce three scenarios to the Jameson system to have the number of sub-problems and database partitions equal to three”, “to assign an identification value to the clusters stored in Jameson’s system in order to more efficiently find the clusters and their stored results”, and “to incorporate the advantages of sizing the sub-problem partitions as close to equal as possible, by collecting values for specific variables”. (17 October 2005 Office Action, Pages 15-18).

The Applicants respectfully request clarification as to the subject matter for which the Examiner is taking Official Notice. The Applicants respectfully traverse the Official Notice because the asserted facts, as best understood by the Applicants, are not supported by substantial documentary evidence or any type of documentary evidence and appear to be the Examiner’s opinions formulated using the subject Application as a template, which constitutes impermissible use of hindsight. Furthermore, under these circumstances, it is inappropriate for the Examiner to take Official Notice without documentary evidence to support the Examiner’s conclusion. (See MPEP § 2144.03). The Applicants respectfully request the Examiner to produce authority for the Examiner’s Official Notice.

Only “in limited circumstances,” is it “appropriate for an examiner to take official notice of facts not in the record or to rely on common knowledge in making a rejection”. (MPEP § 2144.03). “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art **are capable of instant and unquestionable demonstration as being well-known**. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be ‘**capable of such instant and unquestionable demonstration as to defy the dispute**’ (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961)).” (MPEP § 2144.03(A)). (Emphasis Added).

“It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002).” (MPEP § 2144.03(A)).

“Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that ***general conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection***). The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.” (MPEP § 2144.03(B)). (Emphasis Added).

***The Applicants respectfully submit that the Office Action provides no documentary evidence to support the Official Notice taken by the Examiner, yet the asserted facts are not capable of “instant and unquestionable” demonstration as being well-known.*** The Applicants further submit that the Applicants have adequately traversed the Examiner’s assertion of Official Notice and direct the Examiner’s attention to the pertinent text of the MPEP, which states:

If applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these

findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C)).

Thus, if the Examiner continues to maintain the rejection of claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 based on the Examiner’s Official Notice, the Applicants respectfully request that the Examiner provide documentary evidence as necessitated by MPEP § 2144.03(C). Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, the Applicants further request that the Examiner provide an Affidavit or Declaration setting forth specific factual statements and explanation to support the finding as further necessitated by MPEP § 2144.03(C).

In addition, the Applicants respectfully point the Examiner to the pertinent sections of the MPEP, directly on point to determine whether the next Office Action should be made Final. In particular, the Applicants respectfully direct the Examiner’s attention to MPEP § 2144.03(D), which states:

If the examiner adds a reference in the next Office action after applicant’s rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection, the Office action may be made final. If no amendments are made to the claims, the examiner must not rely on any other teachings in the reference if the rejection is made final. ***If the newly cited reference is added for reasons other than to support the prior common knowledge statement and a new ground of rejection is introduced by the examiner that is not necessitated by applicant’s amendment of the claims, the rejection may not be made final.*** (MPEP § 2144.03(D)). (Emphasis Added).

### **The Applicants Claims are Patentable over the Proposed *Jameson-Official-Notice* Combination**

As mentioned above, independent claims 1, 9, 10, 16, 18, 19, and 27 are considered patentably distinguishable over *Jameson* or the Examiner’s Official Notice. With respect to dependent claims 3, 5, 6, 12, 14, 15, 21, 23, and 24: claims 3, 5, and 6

depend from amended independent claim 1; claims 12, 14, and 15 depend from amended independent claim 10; and claims 21, 23, and 24 depend from amended independent claim 19. As mentioned above, each of independent claims 1, 9, 10, 16, 18, 19, and 27 are considered patentably distinguishable over the proposed combination of *Jameson* or the Examiner's Official Notice. Thus, dependent claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, the Applicants submit that claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 are not rendered obvious by the proposed combination of *Jameson* or the Examiner's Official Notice. The Applicants still further submit that claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 under 35 U.S.C. § 103(a) be reconsidered and that claims 3, 5, 6, 12, 14, 15, 21, 23, and 24 be allowed.

#### **THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 U.S.C. § 103:**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there ***must be some suggestion or motivation***, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations***. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and ***not based on applicant's disclosure***. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

**CONCLUSION:**

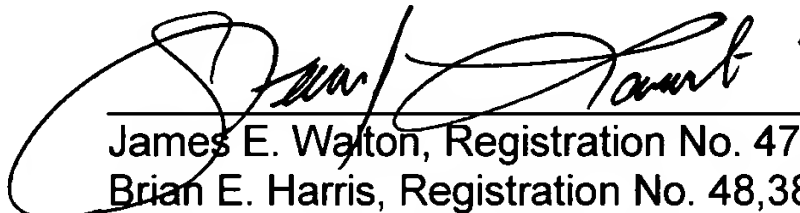
In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

No fees are deemed to be necessary; however, the undersigned hereby authorizes the Commissioner to charge any additional fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**.

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

1/16/06  
Date

  
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**CUSTOMER NO. 53184**

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